

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim Rejections – 35 U.S.C. § 102(b)

Claims 1-11 stand rejected as being anticipated by Matthews *et al.* (WO 95/34595). Applicants respectfully traverse this rejection.

Claim 1 recites:

A method of inhibiting the activity of a toxic material or substance...wherein said toxic material or substance is released from a biological organism, and wherein said toxic material or substance is selected from the group consisting of (i) toxins and toxic peptides of biological original and (ii) toxins and toxic peptides released during bacterial, protozoal or fungal infection.

The Office contends that Mathews *et al.* teach compounds and compositions for treating “infections caused by toxins”. Office action, page 2, last paragraph (emphasis added). Contrary to the Office’s contention, Mathews *et al.* disclose compounds and compositions for treating infections caused by viruses, such as HIV. *See*, for example, page 5, line 26 to page 6, line 3; and page 7, lines 6-10. The record is devoid of any indication that a person skilled in the art would equate a virus with a toxin or *vice versa*.

The Office argues that “‘toxic materials or substances’ embrace the actual viruses themselves as well as toxic substances released from the viruses” and cites, as support, Figure 1 and the specification at page 9, lines 4-10. Office action, page 3, second paragraph. No aspect of the application validates the Office’s position.

The commentary cited on page 9 of the specification merely defines “toxic materials or substances” as “toxins of biological (animal, plant, microbial or viral) origin, including...toxic peptides or other materials or substances released during...viral infection.” This definition thus qualifies “toxins” by reference to “origin”, which would hardly make

sense in relation to viruses *per se*. Figure 1 comports with this understanding, showing the inhibition of Vpr peptide fraction P3, a toxic peptide the “origin” of which is the HIV.

Claim language takes its plain and ordinary meaning unless the specification, including figures, clearly conveys another meaning. *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 69 USPQ2d 1857 (Fed. Cir. 2004). By this measure, the Office’s interpretation certainly is unfounded.

In view of the foregoing and the commentary of applicants’ previous responses, there is no justification for the Office’s continued assertion “that the claims even as amended appear to read on method of inhibiting viral activity”. Office action, page 3, second paragraph. Accordingly, withdrawal of this rejection is respectfully requested.

Claim Rejections – Obviousness-type Double Patenting

Claims 1-11 stand rejected as being unpatentable over claims 1-36, 38 and 39 of U.S. Patent No. 6,190,650. In support of this rejection, the Office contends:

The application for the most part recites a method of inhibiting toxic material where the toxic material is a viral infection...The issued patent for the most part teaches a dendrimer composition and a method for administering the composition to treat...infections that are caused by toxins.

Office action at page 4, second paragraph. Applicants respectfully traverse this rejection.

For the reasons elaborated above, the evidence of record fails to establish either that the ‘650 patent (the U.S. national phase of Mathews *et al.*) teaches treatment of “infections that are caused by toxins” or that “toxic material or substance” could be construed as a “viral infection.” Accordingly, withdrawal of this rejection is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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